

PERSONAL INJURY CASES

FROM START TO FINISH



ZANER HARDEN LAW
YOUR STORY WILL BE TOLD

You've been injured.

It could have been caused by a car accident, slip and fall, or a dangerous prescription drug.

You're in constant pain. Perhaps you no longer have a functioning vehicle. You're worried about the medical bills that will be coming in soon and how you will pay for them. You wonder if you can continue to work your regular job, even with the intense pain.

Most injured people have had these concerns or questions at one point or another. They know their injury wasn't their fault. They wonder if it was just bad luck or something else. They ask themselves if there's anything they can do to get their life back to what it was before the injury.

The good news is that there is help available. Federal and state laws allow injured persons to recover many of the costs associated with injury – including wage loss, medical bills, and damaged property.

The attorneys at Zaner Harden Law are committed to helping the injured get their life back. That's why we created this guide to discuss some of the basic things every injured person needs to know.

What You'll Learn in this Guide

- Why filing a personal injury claim doesn't mean you are contributing to an 'over-litigious society'
- The basic law regarding negligence and injuries and whether you have a case
- The general timeline of an injury case
- What to expect at your initial consultation
- Answers to common questions and concerns

SECTION 1: **INTRODUCTION TO PERSONAL INJURY**

In any personal injury claim, four “elements” or requirements under the law must be satisfied:

1. The person who caused the injuries must have a duty to the victim of the injuries.
2. The at-fault party must have breached his or her duty when causing the injuries.
3. Injuries or damages must have resulted from the at-fault’s actions in breaching those duties.
4. Fourth, the at-fault’s actions must have caused the injuries or damages.

Example:

Let’s take a typical motor vehicle crash such as a rear-end collision as an example. All drivers on the road have a duty other drivers, pedestrians, and cyclists to drive carefully and safely. In Colorado, a driver who rear-ends another driver is presumed to be negligent – in other words, rear-ending another vehicle is a presumed breach of the duty to drive safely. In order to have a personal injury claim, injuries such as whiplash or broken bones must have resulted from the crash. Finally, the injuries which resulted must have been caused by the collision alone. If all these requirements are met, an injury claim legitimately exists.

Why The Law Requires Insurance

The reason why insurance is mandatory for all drivers and vehicles is because car collisions happen frequently and people both cannot and do not want to be personally liable for injuries or property damage that results from a crash.

Imagine that a driver causes \$12,000.00 in damage to your car, while you also need \$5,000.00 in medical treatment because of your injuries. If the driver were personally liable, he would have to pay out \$17,000. Most people do not have this kind of cash sitting around should this occur.

Thus, the government has mandated that all drivers pay premiums to an insurance company who will “cover” this driver for any injuries or property loss that their insured may have caused.

In Colorado, the minimum liability coverage is **\$25,000.00 per person** and **\$50,000.00 per accident**. The “per accident” amount comes into play when, for example, there are multiple people in one car who are injured or multiple vehicles involved in a crash.

When you hire a personal injury attorney, most of the communications from your lawyer will be with the insurance company, not the at-fault driver. Insurance companies have large claims departments who will work with your lawyer to discuss the injuries that occurred, what sort of medical treatment was received, if there are any lost wages, and the intangible ways the crash affected your life. The folks who initially handle claims for an insurance company are called “adjusters.” While insurance companies do, of course, also have many lawyers working for them, generally lawyers only become involved once a lawsuit is filed.

On paper, insurance companies are supposed to pay for any and all damages and losses caused by their own insured.

In reality, however, insurance companies are businesses with bottom lines, profit margins, shareholders, and executives. Therefore, insurance companies are constantly finding ways to deny claims entirely or severely undervalue how much a claim is worth. In doing so, the insurance company is hoping that people will drop their claims or take much less than they deserve, putting more money into the insurance company’s coffers.

This is precisely why hiring an experienced and dedicated personal injury attorney is so important after you have been injured.

SECTION 2: **DO I HAVE A CASE**

Determining Whether You Have A Case

You should always meet with an attorney to discuss your unique situation and whether or not you have a case.

Generally speaking, if you have been involved in a motor vehicle crash that was not your fault and were injured, you have a case. Our requirements at Zaner Harden Law mirror the requirements under the law.

Here is a checklist of things we look for when considering a car accident case:

- ✓ Did another driver have a duty to you to drive safely and carefully?
- ✓ Did that other driver breach that duty and drive negligently, such as rear-ending or failing to yield to your vehicle?
- ✓ Did the other driver's actions cause you to sustain injuries?

If the answers to these questions are all “yes,” you usually have a case.

An Attorney Can Help Identify Specific Nuances

The reason why you should always consult with an attorney is because there are unique circumstances surrounding each potential case.

For example, what if the crash was partially your fault and partially another driver's fault? You and your attorney will have to take that into consideration.

Also, how long ago did the crash occur? In Colorado you have three years to file a lawsuit against the at-fault driver (other states have different deadlines).

Does the at-fault driver have insurance? If not, your attorney will need to look into the details of your own insurance coverage.

SECTION 3:

COMMON OBJECTIONS TO HIRING A LAWYER

Is Filing an Injury Case The Right Thing To Do?

Many times, even if people clearly “have a case,” they often have issues with filing a personal injury claim. Below are some we hear frequently:

I don't want to make the other person's life difficult or hurt them

For starters, keep in mind that this other person made *your* life difficult by failing to drive carefully and causing you injuries.

However, if you still have second thoughts, remember that your lawyers will be dealing with the other person's insurance company, not the other person directly. All of us are required to buy liability insurance for a reason – that if we do end up causing another person injuries while driving, there will be at least some money through an insurance company to help them out.

While it is true that this other person's insurance rates may go up, is it really worth not pursuing a claim at all just so someone else who was at fault can avoid paying a little more in insurance premiums each year?

By filing a lawsuit, I am contributing to an “over-litigious society” that leads to higher insurance or health costs

One of the most common misconceptions about a personal injury claim is that they are not “good” for society. Some believe too many people are filing lawsuits, while others believe that in bringing a personal injury claim, life becomes more expensive for everyone else.

To begin with, there are penalties built into the law for bringing “frivolous” or “groundless” lawsuits. These penalties may include paying the insurance company's own costs and attorney's fees. No good lawyer would ever want to bring this type of lawsuit because of the potential consequences both the lawyer and client would face as a result.

Furthermore, even beyond these penalties, the lawyers at Zaner Harden Law do everything they can to avoid having to file a lawsuit. The majority of cases are settled without a lawsuit ever being filed.

Because we have beaten the insurance companies so many times and for such large dollar amounts, insurance companies want to pay our clients top dollar value so we don't embarrass them in court and increase their exposure. To us, a lawsuit becomes an option if and only if the insurance company refuses to treat our client fairly and present an adequate settlement offer.

Finally, there are those who believe that filing a personal claim raises health and automobile insurance costs for everyone else. This is simply not true. Insurance companies generally know who the riskier drivers are, and will address that risk by charging these individuals more for their insurance. Similarly, after an individual causes an accident, only their rates will go up, not the rates of anyone else. This is similarly true for healthcare providers and insurers. Whenever a hospital or clinic has provided treatment for an individual who has been injured in a crash that was not their fault, the hospital or clinic has a right to get paid back out of that person's settlement. The legal word for this is "subrogation." Therefore, the insurer or hospital can "get back" whatever costs it laid out, and costs do not go up for everyone else.

Why file if I was not hurt that bad?

Your lawyer will want to discuss with you what not being hurt "that bad" means to you. Just because you did not break any bones or spend weeks in the hospital does not mean that your injuries are not significant.

Many clients who "only" experience neck, back, or shoulder pain as the result of a crash still have their lives significantly impacted. Often times these individuals must attend many sessions of PT or receive more intensive medical treatment such as injections. Receiving this treatment comes at the cost of having to spend time away from your family and workplace, and the healing process, even for "minor" injuries, can be long and painful.

Furthermore, a personal injury claim includes a lot more than medical bills. For example, a claim also includes mileage to and from doctor's offices, lost wages for any time you had to miss from work, as well as a broad category of what are called "non-economic damages." Most commonly, people are familiar with non-economic damages as "pain and suffering," but, again, a lot more than that is included. Has your life been inconvenienced as a result of the crash? Have you had to sit out from doing various activities because you are in pain? Has your relationship with your spouse, family, and even friends become strained? Have you had trouble sleeping, sitting for long periods of time, or going to work? These are parts of your claim which is it hard to put an exact dollar figure on but still can be included and are absolutely legitimate.

Finally, you just won't know how injured you are until you finish treatment. For example, two people could come complaining of the same neck pain. However, one may end up needing a neck fusion (the fusing of vertebrae together) while the other may just need physical therapy.

As explained in other parts of this E-Book, you want to make sure you see an attorney as soon as possible in order to protect your rights. Thus, when you first visit an attorney, you may not know how big or small of a case you may have. In either situation, you need to see an attorney and see how your injuries heal.

Why hire a law firm if I can just negotiate on my own and keep all the money?

This is a question we get frequently and always answer honestly. If we do not believe your case is the type that requires an attorney, we will be the first to tell you. One of the reasons that we are so highly-reviewed online is because of our commitment to honesty and putting our clients – and prospective clients – before our own interests.

With that said, often a lawyer's help is required to achieve the kind of result that most clients are looking for. Insurance companies are in the business of evaluating risk. To an insurance company, a person who -

is not licensed to practice law presents very little risk, as this person is not well-versed in the intricacies of personal injury law and, most importantly, cannot file a lawsuit and try a case before a jury if settlement negotiations fail. Even an individual who takes the time to “learn” personal injury law and advocate on their own behalf, and who may try and use legal terminology with the insurance company, still does not present that much of a risk to a giant corporation like State Farm.

Besides having the leverage of being able to file a lawsuit, which automatically costs the insurance company a lot more money than just settling the claim would, having an experienced lawyer on your side always puts increased pressure on the insurer.

Also, there are many consumer-friendly laws that you will not know about and insurance companies will surely not tell you about. Things like medical payments coverage, the billed v. paid issue (whether you can collect the amount of your bills or the amount your health insurance paid), how much your health insurance is entitled to be reimbursed (subrogation right) if any, etc. Additionally, there are additional categories of damages which may be available beyond those typically included in a personal injury claim based upon the at-fault party’s conduct before, during, and after the crash. Finally, a lawyer has the skills to take depositions, draft and file court documents, and appear in front of a judge or jury that an ordinary person does not have.

Of course, one of the benefits of having a lawyer is that we do all the fighting for you, taking all the stress off your plate and leaving you time to focus on what matters most: getting the medical treatment you need and feeling better.

Once you bring Zaner Harden Law in on your case, you will not ever have a frustrating call with the insurance company again. If your case does proceed to litigation, you can rest assured knowing that you have the best advocating for you and walking you through every step along the way, even if that means taking your case all the way to trial.

SECTION 3:

TIMELINE OF AN INJURY CLAIM

6 Potential Phases of an Injury Case

There are four main phases of a personal injury case. Five phases if litigation is necessary and six phases if we go to trial. We'll discuss them in more detail below:

1

Start-Up Phase

This is when your attorneys send out the necessary representation letters to all necessary parties: including the at-fault driver's car insurance, your car insurance, your health insurance, and other important players.

At this stage, the lawyers are making sure they uncover all potential sources of recovery (insurance) and do everything that is required under the policies to ensure your rights are protected. If certain steps are not taken with your own policies, you may lose coverage.

At this stage your lawyers will also be investigating the case to look for other potentially responsible parties as well as looking for helpful pieces of evidence that may not last for very long (videos, witness, statements, etc.) In a perfect world, its best to acquire legal representation early on so all of these steps can be taken care of quickly. This sets up the case the right way from the start

2

Treatment Phase

During this stage, your only focus is to follow your doctor's recommendations and work on getting and feeling better.

It's important to take the appropriate length of time for your body to heal. This looks different for everyone, as the same injury can heal at different speeds for different people.

Because settlement is a one-time deal, it's crucial to settle (or attempt to settle) at the right time. If you settle too early, you risk needing future medical treatment and not getting the proper funds from a settlement to pay for it.

As attorneys, we are here to monitor your treatment, not direct it. Only you know how your body feels in comparison to before the incident. What you need to do to feel better is a decision made between you and your doctors. If needed, we can help you connect with the right doctors.

3

Demand Phase

This is where your story is told to the insurance company. First, we gather medical records and bills from all the doctors you visited for incident-related care. We then create and send a “demand packet” to the insurance company.

In this demand, we tell the insurance company how the incident occurred, why their insured is at fault, the types of injuries you sustained, the type(s) of medical treatment you received, the medical bills you incurred, and how your injuries affected your life. We also include the miles you had to drive to go back and forth from doctors’ appointments and any wage loss you incurred because of your injuries.

Examples of Wage Loss:

Maybe you used to work full time but now you can only work part time because of your injuries; or over the span of several months you missed a week of work so you could go to physical therapy; or maybe you missed two months of work because you were recovering from a surgery you needed to get. All of these would be considered wage loss.

4

Negotiations/Settlement Phase

Once the insurance company reviews the demand packet, we start negotiations in an attempt to settle your case.

We ask the insurance company to start with their initial offer. This offer is typically quite low, as the insurance company is trying to settle your claim for the lowest dollar amount possible. Our mission is to get you top dollar for your claim and we will accept nothing less.

After going back and forth with the insurance on numbers, we will finally get them to their “top” amount. This is the number they have valued the case at and are willing to pay to avoid court.

This is when you and your attorney have an honest conversation about your case. You will discuss both the positive and negative facts about your case and ultimately, whether the insurance company’s top amount is an appropriate number to settle your case.

As always, we are there to offer our advice, but the final decision is yours. The decision not only takes into account the actual dollar amount, but also weighs the risks and benefits of not accepting the settlement amount. Ultimately, you and your attorney decide whether to accept the settlement or initiate litigation and file a complaint within the court system.

5

Litigation Phase

Litigation does not guarantee a trial. Litigation begins by filing a complaint within the court system. From there, settlement may still occur at any point before trial.

Usually, the time between filing a complaint and starting trial is one year, so there is plenty of time to settle if you so choose. Think of it as a marathon rather than a sprint.

Once a complaint is filed, we wait for the insurance to file an “answer.” The answer is their response to the claims we allege in our complaint. Then the “discovery” phase starts, which is when both sides gather evidence on their own and ask the other side for any evidence in their possession.

Depositions come next, where the insurance company and your attorneys get to formally ask people (including you, your doctors, any witnesses, maybe even your friends) questions under oath.

After depositions, the parties will likely schedule a mediation. Mediation is when both sides agree to speak with an unbiased mediator (usually a retired judge) about settling the case before a trial becomes necessary. The case may or may not get settled here. If not, trial is the next step.

6

Trial Phase

When the parties cannot agree on a settlement amount, trial becomes necessary. Trial is a formal process, where both sides argue their case, a judge makes decisions about the law, and the jury makes the ultimate decision about how much money, if any, you the Plaintiff are entitled to receive as a result of the incident. A trial usually lasts somewhere between two to five days.

SECTION 4: **COMMONLY ASKED QUESTIONS**

When Should I Contact a Lawyer?

The sooner the better.

If you think you are injured and need medical care, it is time to call a personal injury attorney. The sooner you do, the sooner you can have peace of mind that your interests are being protected.

We handle the insurance companies so you can focus on getting better. There are a few obligations that you may not know about imposed by your insurance company that if you fail to follow, may void your coverage.

You also may have thousands of dollars available to you through Medical Payments coverage with your own insurance; however, your insurance company doesn't always tell you about this coverage. There is always a time period to access these benefits, and if you wait too long, you lose that money forever.

Also, it's important that you don't tell the at-fault driver's insurance company anything harmful to your case. They will contact you and try to convince you to sign releases, provide statements, and concede damaging points; all of this is to be avoided.

Finally, it is really important to get you to the right doctors for your injuries as soon as possible. Insurance companies love to argue that an injured client really isn't that injured if they wait too long to seek out medical attention or go to the wrong kind of doctors.

At Zaner Harden Law we have years of experience working with the best doctors in the state who know how to specifically treat people with injuries from car crashes, motorcycle crashes, slip and falls, insurance disputes, defective products, and dog bites.

What Happens At The Initial Consultation

The two most important things we decide at a consultation are:

- 1) Do you have a case
- 2) Can Zaner Harden Law help you.

What we will not be able to tell you at this time is the value of your case. This is something that can be better discussed at the end of your medical care. Discussing before that would be doing you a disservice.

During the consultation you will generally be asked about what happened, how you were injured, the insurance carriers involved, if there were any witnesses, and if there is a police report.

If it is a car or motorcycle crash it would be helpful to see pictures of the vehicles involved after the crash. If it is a slip and fall, we would like to see pictures of the area where you slipped and the substance (ice, spilled substance, rocks, pothole, etc.) that caused you to fall and injure yourself. If you were bit by a dog, what does the dog look like and how severe are your injuries? Do you know if the dog has bitten other people in the past? Any medical bills would also be appreciated.

For a car or motorcycle crash it would be incredibly helpful for you to bring something called the “declarations page” from your insurance carrier, to see what types of coverages you have available. Additionally, if you live with a family member, please bring in their “declarations page” for any additional policies to see if more coverage might be available to you.

We also want to figure out if you will be a good fit for our firm. We are not a TV law firm and do not handle thousands of cases. We have to be selective with the clients we bring on so that we can provide the top-shelf representation we are known for. We also believe the clients should be selective for the firm they are hiring. This is a very important decision and hopefully the last time you will have to hire a lawyer. So it is critical that

you trust your attorneys, believe in their skills, and are confident they can deliver the very best result.

If you decide to have Zaner Harden Law represent you, we immediately get started on your case. We introduce you to “your team.” Typically, your team will consist of a lead attorney and a paralegal. We are all there to help you. Each team member is suited to the task they are best qualified to handle.

What Happens During Discovery?

All different types of evidence will be obtained during discovery. What is asked for will largely depend on your specific case. Generally, both sides will want your medical bills and records from your incident-related treatment, complete copies of insurance policies, police reports, and any witness statements, recordings, social media posts, or videos made that are related to the incident. Sometimes phone records might also be requested if there is a concern a driver might have been distracted while driving at the time of the incident. Typically, personal issues unrelated to the incident are not requested. The goal is to get a better idea of what happened and why; it is not the goal to unnecessarily pry into your personal life.

How can I pay medical bills while waiting for my case to settle?

Typically, any medical bills not covered by insurance co-pays and deductibles have to be paid as you go. If you have Medical Payments coverage through your auto insurance, we can help you use that coverage to pay these expenses. However, if you can't pay your co-pay/deductible, you may be sent to collections. We will do everything we can to talk to the provider and ask them not to send you to collections; however, there is no guarantee that they will hold off. Any lawyer that tells you differently is lying.

If you are not able to pay your medical bills, or you don't have any health insurance, you may want to have your lawyers look into a medical lien to finance your medical care. With this option, you will not have to pay anything out of pocket as the lien company will handle all your bills on the front end. Then, after your case settles, you will pay them back out of your settlement. This is a good option for folks with no insurance, bad insurance, or high deductibles/co-pays that they can't afford.

What Happens If Negotiations Fail?

Don't worry, just because negotiations might initially fail does not mean all is lost. We move forward and discuss with you filing a complaint with the court system. This will get your case into another insurance adjuster's hands. It will also get an attorney from the insurance company assigned to your case. This changing of hands on the side of the insurance company is good for you. Likely, an attorney on the other side will add more perspective and encourage the insurance company to further negotiate in hopes of settling. If not, the attorneys at Zaner Harden Law will fight for you and move forward with the litigation process. There will then be further opportunities to settle your claim. If a settlement is still not reached, we will advise you on the risks and benefits of proceeding to trial and what we believe is best for you and your specific situation.

SECTION 5: **AFTER THE SETTLEMENT**

What You Need To Know About Settlements

A settlement or jury award will never fully make up for the time spent, injuries sustained, and inconveniences incurred because of your specific incident. However, money is the only thing our system has available to help compensate you for your damages and losses. While we would never say that the money makes it worth going through all the pain, doctor visits, and further inconveniences, we at Zaner Harden Law can promise you that we will work tirelessly to provide you the very best result. Rest assured, we make the insurance companies lay out every dollar on the table that they have to spend on your case and we will get you the maximum value possible for your case. The best way to find out if past clients are happy with an attorney's services (and the result) is to look for online reviews of that firm. Check out sites like Google, Avvo, and Thumbtack. These are independent sites that accept reviews of all attorneys. Be wary of looking at reviews that are just posted on an attorney's website as there is not way to verify that those are actual authentic reviews.

How Settlement Awards Are Disbursed

Once your case is settled for a certain amount, there is still a lot of work that must be done before you can get your check. The check from the insurance company must first be deposited into the firm's client trust account. Receiving a check, depositing it, and then letting the deposit settle with the bank can sometimes take several weeks.

Once the check has settled, Zaner Harden Law will then have to take a close look at your entire file and evaluate a number of factors, including how much you owe back to health insurance or healthcare providers. This is a critical step because your health insurance, lien company, or other providers have a legal right to be paid back for any treatment they provided. If you have a skilled attorney, he or she will be able to negotiate these amounts down to as little as possible so more goes into your pocket.

Not all lawyers will do this; some firms will hire an outside company to negotiate with the insurance company and then they will take money out of your settlement for this service. Zaner Harden Law does not do this; Zaner Harden Law negotiates these balances down in-house and considers it part of the attorney fee you are paying them.

Once the balances have been reduced, the firm will then draft a “distribution statement” which will break down your settlement in great detail and will show you how much money will be going into your pocket. At that point, the firm will schedule a time for you to come in, review, and sign the distribution statement. If you have any questions about your settlement, you are of course free to ask them before signing anything. Once the distribution statement is signed, the firm will hand you a check which you can then deposit in any bank account with your name on it.

Tax Issues to Be Aware Of

The general rule regarding personal injury settlements is that they are tax-free. The underlying logic of this is that a settlement is not “income” like a salary or bonus is – it is money which is needed to make you whole and bring you back to where you were before the crash occurred. For this reason, the government is generally not entitled to any taxes from the settlement.

However, some parts of the settlement may be taxable – including parts of the settlement that are considered wage loss. Clients who do have questions about the tax implications of their settlement are advised to speak to their accountant or a tax attorney.